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09/653,555	09/01/2000	William O. Mattick	P_3009.002 Ames	5462

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EXAMINER

SMITH, JEFFREY A

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/653,555

Applicant(s)

MATTICK ET AL.

Examiner

Jeffrey A. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5 and 7-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 and 7-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed June 6, 2003 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

The information disclosure statement filed June 6, 2003 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

Drawings

The drawings were received on June 6, 2003. These drawings are approved.

Specification

The disclosure is objected to because of the following informalities: the "Description of the Drawings" is not consistent with the Figure labeling provided in the formal drawings received June 6, 2003.

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Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4: the parenthetical examples recited in the claim renders the claim indefinite because it is unclear whether the limitations are part of the claimed invention. See MPEP § 2173.05(d).

In claim 10, last line: "the vehicles" lacks antecedent basis. For examination purposes --the products-- has been considered. Applicant must make the appropriate correction.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5, 7-10, and 12-14 are rejected under 35

U.S.C. 103(a) as being unpatentable over The American Council for an Energy-Efficient Economy (ACEEE) (as evidenced by "First-Ever Green Guide to Cars and Trucks Helps Buyers Choose Most Environmentally Friendly Vehicles That Meet Their Needs", PRNewswire, March 17, 1998 [Dialog File 813, Accession No. 1244108] (hereafter "First-Ever"); Nauman, Matt: "How Green is My...? Gas Hogs Get Their Comeuppance in a Book that Rates Cars, Trucks, Minivans and Sport-Utilities by Their Impact on Environment", San Jose Mercury News, Edition: Morning Final Section: Drive, page: 1G, April 3, 1998 [Dialog File 634, Accession No. 09593075] (hereafter "How Green"); and www.aceee.org [archived at www.archive.org December 2, 1998] (hereafter "aceee.org")) in view of Official Notice regarding

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the obtaining of data over the Internet and further in view of www.bbbonline.org.

ACEEE, a non-profit concern independent of the automotive industry (see both "First-Ever" and "How Green"), established a web site (see both "First-Ever" and "How Green") which identifies and ranks cars and trucks for environmental performance. The company (which is considered an e-commerce company because of its web site presence) developed an objective environmental performance rating system based upon its own algorithm (see "How Green"'s discussion of the manner in which the scoring curve was established) driven by quality assured data provided by both the industry and the federal government (see "First-Ever"'s discussion of emissions certificates and fuel economy data which automakers report to the EPA). The data is processed into ratings in accordance with said algorithm to identify the most environmentally sensitive vehicles (see "How Green"'s discussion of emissions standards, health costs of emissions and global warming, lifetime pollution and greenhouse-gas emissions, and vehicle mass).

ACEEE's web site identifies the rating system and the identification of vehicles with the highest ratings (see "aceee.org").

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ACEEE facilitates the promotion of the results by companies (see "How Green"'s discussion of automakers taking the information to heart and the hope that automakers will begin marketing certain vehicles as being picked a best bet).

ACEEE further identifies different vehicles by brand name and model (see "aceee.org"); produces the ratings in timed relationships with the beginning of the model year of the industry (see "How Green"'s discussion of ACEEE's intent to produce the ratings annually); and, by virtue of its web presence, has implemented its communication plans to identify the top environmental performers to consumers.

ACEEE establishes a national recognition for its ratings and its awards (it is noted that ACEEE is a national council). ACEEE facilitates the use of the rating system and use of the awards by the manufacturer in its promotional activity (see "How Green"'s discussion of its hope that automakers will take the information to heart and begin marketing certain vehicles as being picked a best bet).

ACEEE develops and implements its web site and press releases (see "aceee.org") which facilitates the recognition and acceptance for its rating system; and facilitates the advertisement and identification of top-rated vehicles to induce consumers to buy the top-rated vehicles (as discussed above).

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The Examiner notes the many advantages either explicitly or implicitly present in ACEEE's method. For example, ACEEE rates vehicles in terms of how good or how bad they are for the environment (see "How Green"); enables consumers to select and buy the vehicles which most closely meet their concerns (see "First-Ever"'s discussion of "empower[ing] consumers to make greener choices"); influences consumer choice (see "First-Ever"); and encourages automakers to provide cleaner more fuel-efficient vehicles (see "First-Ever").

ACEEE does not detail the manner in which the quality assured data is obtained.

However, Official Notice is taken that it is notoriously well-know for publicly available data to be obtainable via the Internet. The data obtained by ACEEE concerns certain data reported to the EPA. It would have been obvious to one of ordinary skill in the art to have provided the method of ACEEE, as modified, to have included the step of obtaining the quality assured data already obtained from the EPA via the Internet in order to facilitate the data's procurement.

ACEEE does not detail a granting to each manufacturer of an award winning vehicle, the opportunity of a license to display said award in its advertising.

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www.bbbonline.org, in a similar method, teaches that "[t]he BBBOnLine seal allows online businesses to show their commitment to their customers". Such seal allows a user of the businesses' web site to confirm that any given business has met standards established by BBBOnLine. Such seal constitutes a "seal of approval" which amounts to a license to display such seal for the purposes intended.

It would have been obvious to one of ordinary skill in the art to have provided the combined method of ACEEE and Official Notice to have further included the step of granting to each manufacturer of an award winning vehicle, the opportunity of a license to display said award in its advertising in order that the manufacturers of award winning vehicles may show their commitment to their customers in offering "environmentally friendly" or "green" vehicles as determined by an independent source such as ACEEE.

Regarding claims 5 and 14, ACEEE, as modified, does not provide the step of establishing links between its web site and the web sites of automotive e-commerce business.

"BBBOnLine" teaches establishing links between www.bbbonline.org (which serves as a validating web service) and e-commerce businesses to permit visitors to the e-commerce web

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sites to obtain independent verification of ratings and awards (see "BBBOnLine": "BBBOnLine for Consumers: What to Look For").

It would have been obvious to one of ordinary skill in the art to have provided the method of ACEEE, as modified, to have included the step of establishing links to automotive e-commerce businesses (in the spirit of the teaching of "BBBOnLine") in order to allow e-commerce businesses, of the type addressed by ACEEE, the ability to show their commitment to the environment to their customers (see "BBBOnLine": "BBBOnLine for Consumers: What to Look For").

Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over The American Council for an Energy-Efficient Economy (ACEEE) (as evidenced by "First-Ever Green Guide to Cars and Trucks Helps Buyers Choose Most Environmentally Friendly Vehicles That Meet Their Needs", PRNewswire, March 17, 1998 [Dialog File 813, Accession No. 1244108] (hereafter "First-Ever"); Nauman, Matt: "How Green is My...? Gas Hogs Get Their Comeuppance in a Book that Rates Cars, Trucks, Minivans and Sport-Utilities by Their Impact on Environment", San Jose Mercury News, Edition: Morning Final Section: Drive, page: 1G, April 3, 1998 [Dialog File 634, Accession No. 09593075] (hereafter "How Green"); and

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www.aceee.org [archived at www.archive.org December 2, 1998] (hereafter "aceee.org")) in view of Official Notice regarding the obtaining of data over the Internet and in view of www.bbbonline.org as applied to claim 7 and further in view of "Fuel economy ratings: 1995 mileage estimates—Special report, part 4", Consumers' Research Magazine, Washington, Nov. 1994, Vol. 77, Iss. 11, page 18 (hereafter "Fuel economy").

Although "How Green" reports that ACEEE produces the ratings in timed relationships with the beginning of the model year of the industry (see "How Green"'s discussion of ACEEE's intent to produce the ratings annually), "How Green" does not specifically report that the ratings are produced at the beginning of the model year of the industry.

However, "Fuel economy" reports that similar rankings performed by the EPA (i.e. "the latest annual mileage estimates by the Environmental Protection Agency (EPA)") are made available to consumers in dealer show rooms and on new car stickers as required by law ("Fuel economy", last 3 lines). Accordingly, the EPA rating is produced at the beginning of the model year of the industry since no new car may be offered without said sticker containing it's respective EPA rating.

It would have been obvious to one of ordinary skill in the art to have provided the combined method to have included the

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step of producing the ratings at the beginning of the model year of the industry in order to have provided new car customers with important or pertinent rating information for consideration when choosing from among different car models (see "Fuel economy", first two lines).

Response to Arguments

Applicant's arguments received June 6, 2003 have been fully considered but they are not persuasive.

Applicant remarks that Applicant's method is market-driven vs. regulation-driven.

The Examiner notes that the term "market-driven", in-and-of-itself provides no specificity which can be relied on to impart the patentable moment necessary in obviating the combined method discussed above. There are no active method steps that serve to define the instant method from the combined method steps offered in the rejections stated above. Moreover, Applicant attempts to support the distinction between the instant invention and purported evidence in the prior art "Green Book". The Examiner has not relied upon this publication in forming the rejections reported above. The Examiner has relied upon the business model referred to as "ACEEE" as evidenced by numerous documents—none of which is identified as the "Green

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Book" specifically discussed and limited in Applicant's remarks. The Examiner acknowledges that it appears that such publication referred to as "Green Book" may form part of ACEEE's overall business model, however, the limited discussion of this publication alone is not fully telling of the business model as a whole-particularly as ACEEE's business model applies to the claims.

Applicant remarks that Applicant's information is provided "free via the internet".

The Examiner notes that such remark is not commensurate with the claims in that none of the claims makes a similar recitation.

Applicant remarks that ACEEE is a non-profit concern, whereas Applicant's invention includes a profit-motive company and thus part of a market-driven system.

The Examiner notes that the claims make no positive recitation of "a profit-motive company". The Examiner further notes that the recitation of "a market-driven system" in-and-of-itself lends no patentable specificity to the instant method, as claimed. Moreover, the mere recitation of a "market-driven system" does not confer the status of "profit-motive company"

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upon any generically recited company falling within the metes and bounds of the claim.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Markiewicz, David A.: "Ford trumpets Taurus' top spot", Detroit News, Detroit MI, January 8, 1993, Sec. E, page 2 details the manner in which an automobile manufacturer (Ford) creates an immediate advertising campaign upon the release of ratings by an independent source which are favorable to a product ("Taurus model") produced by such manufacturer. The manufacturer's advertisements (TV, magazine and newspaper) freely incorporate the independent source's released ratings ("ads will show a partially obscured list of the top-10 selling cars, with the Taurus name circled at the top").

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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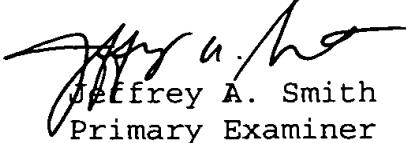
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Jeffrey A. Smith
Primary Examiner
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